

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

ADAM WAYNE ANTAL,	:	
Plaintiff	:	CIVIL ACTION NO. 3:17-2097
v.	:	JUDGE MANNION
NANCY A. BERRYHILL¹,	:	
Defendant	:	

ORDER

Pending before the court is the report of Magistrate Judge Martin C. Carlson, which recommends that the decision of the Commissioner be affirmed. (Doc. 14). No objections have been filed to the report. Upon review, the report will be adopted in its entirety.

When no objections are made to the report and recommendation of a magistrate judge, the court should, as a matter of good practice, “satisfy itself

¹On January 23, 2017, Nancy A. Berryhill became the Acting Commissioner of Social Security. On March 6, 2018, the Government Accountability Office stated that, as of November 17, 2017, Ms. Berryhill’s status violated the Federal Vacancies Reform Act, which limits the time a position can be filled by an acting official and “[t]herefore Ms. Berryhill was not authorized to continue serving using the title of Acting Commissioner...” Violation of the Time Limit Imposed by the Federal Vacancies Reform Act of 1988 Commissioner, Social Security Administration. Government Accountability Office. March 6, 2018. However, Ms. Berryhill continues to functionally lead the Social Security Administration from her position of record as Deputy Commissioner of Operations. Pursuant to Federal Rule of Civil Procedure 25(d), Nancy A. Berryhill is substituted for Carolyn W. Colvin, Acting Commissioner of Social Security, as the defendant in this suit.

that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

In this case, the plaintiff received a partially favorable disability benefits decision by the administrative law judge (“ALJ”), who found that he qualified for disability benefits under the Medical Vocational Guidelines. The plaintiff appeals the partially favorable decision, however, seeking an additional six months of benefits, arguing that the borderline rule, which was designed to allow consideration of what are otherwise barred claims under the grids, also implicitly allows successful claimants a right to additional benefits beyond those prescribed by the grids. In considering this novel claim, Judge Carlson determined that the plaintiff’s proposed interpretation of the Medical Vocational Guidelines is unpersuasive. Judge Carlson concludes that the ALJ properly applied the grids to grant the plaintiff benefits once he attained the age of 50 and that the ALJ also correctly determined that, prior to age 50, the plaintiff was not entitled to these benefits because he retained some limited

capacity to work. Accordingly, Judge Carlson recommends that the decision of the Commissioner be affirmed and the plaintiff's appeal denied.

The court has reviewed the entire report of Judge Carlson and agrees with the sound reasoning which led Judge Carlson to his recommendation. As such, the court adopts the reasoning of Judge Carlson as the opinion of the court.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The report and recommendation of Judge Carlson, (**Doc. 14**), is **ADOPTED IN ITS ENTIRETY**.
- (2) The decision of the Commissioner is **AFFIRMED** and the plaintiff's appeal **DENIED**.
- (3) The Clerk of Court is directed to **CLOSE THIS CASE**.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: August 23, 2018

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